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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA, ex rel. ELIO)
MONTENEGRO; PEOPLE OF THE STATE OF)
ILLINOIS, ex rel. ELIO MONTENEGRO,) Case No. 21 C 2544
)
Plaintiffs,)
)
vs.)
)
ROSELAND COMMUNITY HOSPITAL)
ASSOCIATION; AMERICAN MEDICAL LAB;) Chicago, Illinois
TERRILL APPLEWHITE; and FIVE APPLES) October 10, 2020
INPATIENT SPECIALISTS, LLC,) 10:00 A.M.
)
Defendants.)

TRANSCRIPT OF PROCEEDINGS - In-Person Motion
BEFORE THE HONORABLE YOUNG B. KIM, Magistrate Judge

APPEARANCES:

For the Plaintiffs: A&G LAW LLC
542 South Dearborn Street
10th Floor
Chicago, Illinois 60605
BY: MR. ROBERT M. ANDALMAN
MS. DIANA CAROLINA GULER

For Defendant Roseland: WILSON ELSER MOSKOWITZ
EDELMAN & DICKER LLP
55 West Monroe Street
Suite 3800
Chicago, Illinois 60603
BY: MR. THOMAS KEVIN DUFF

PAMELA S. WARREN, CSR, RPR
Official Court Reporter - Retired
23869 N. High Ridge Drive
Lake Zurich, Illinois 60047
312.823.0001

NOTE: Please notify of correct speaker identification.

1 APPEARANCES: Continued

2 For Defendant AML: DINSMORE & SHOHL LLP
3 222 West Adams Street
4 Suite 2400
Chicago, Illinois 60606
5 BY: MR. MATTHEW CHARLES WASSERMAN
MS. MICHELLE ANNE RAKESTRAW

1 (Proceedings held in open court:)

2 THE CLERK: 21 C 2544, United States of America, et
3 al. versus Roseland Community Hospital Association, et al.

4 THE COURT: Okay. Who is here on behalf of the
5 plaintiff?

6 MR. ANDALMAN: Robert Andelman and Diana Guler, your
7 Honor.

8 THE COURT: For Roseland.

9 MR. DUFF: This is Thomas Duff on behalf of Roseland,
10 your Honor.

11 THE COURT: For AML.

12 MR. WASSERMAN: Good morning, your Honor. Matt
13 Wasserman and Michelle Rakestraw on behalf of AML.

14 THE COURT: Do we have anyone here for
15 Mr. -- Dr. Applewhite?

16 MR. ANDALMAN: We don't, your Honor. And I don't
17 anticipate they will be here. We (unintelligible) has reached
18 a settlement, at least in principle with Dr. Applewhite and
19 Five Apples, and the government has basically approved that
20 settlement. We're just in the process of documenting it.

21 THE COURT: Let me -- do me a favor, Mr. Andelman, can
22 you pull the microphone closer to you?

23 MR. ANDALMAN: Of course.

24 THE COURT: And then if I can have Mr. Wasserman pull
25 the microphone closer to you. Great.

1 Same with you, Mr. Duff. Make sure it is closer to
2 you. I just want to make sure that the record picks you up.

3 So I would like to go ahead and start discussing the
4 motion to compel that's filed against AML. And that's Document
5 Number 109.

6 And I like to start by asking Mr. Andalman to give me
7 an update on any changes since the filing of the motion and
8 what still needs to be addressed by the Court.

9 Mr. Andalman.

10 MR. ANDALMAN: Thank you, your Honor. The biggest
11 change since the filing of the motion was that AML retained
12 different counsel, in essence the day before the response to
13 the motion was due. And Mr. Wasserman then filed his
14 appearance, asked for a little additional time.

15 And he and I have spoken a number of times. He filed
16 a response in essence agreeing that the initial response was
17 inadequate and agreeing to provide interrogatory responses and
18 document requests that were both fulsome and in proper format.

19 Based on our conversations, my understanding is he's
20 done an email collection but is still missing some critical
21 information from his client, including the billing information
22 which is obviously quite critical in this case, still being
23 collected. And I don't know that he has completed his review
24 of the email.

25 So we have not received any additional production yet.

1 But my understanding is that AML agrees that a full production
2 is required and is working on it.

3 THE COURT: Mr. Wasserman, response?

4 MR. WASSERMAN: Mr. Andalman's comments are directly
5 accurate with what we discussed, your Honor. I recognize that
6 on behalf of AML we had indicated that we would make an effort
7 to begin a rolling production as of this week and acknowledge
8 that we have not done so.

9 We haven't done so in part because, as Mr. Andalman
10 just indicated, we have gathered a substantial amount of
11 evidence. The initial production in this case was not in
12 conformity with the Federal Rules on e-discovery. We are
13 working on producing emails in this regard.

14 We have also collected a significant amount of -- I
15 guess I'll call it that reporting related to the COVID claims
16 at issue.

17 But as Mr. Andalman correctly indicated, I still don't
18 have a good handle on which claims were billed and by who,
19 which is obviously important in this case and needs to be
20 produced.

21 I'm working -- we are working very diligently with our
22 client to gather that information, some of which appears to be
23 in possession of third parties. In particular a third-party
24 billing company who seems to be cooperating, along with --
25 there appears to be some billing information that may have

1 already been produced by Roseland. I'm being careful with my
2 words because I haven't reviewed every document produced by
3 Roseland. But I do understand that Roseland did some of the
4 billing itself at issue in this case. And Roseland maintains
5 its own electronic medical records system in this regard. And
6 so Roseland would be in possession of records that would be
7 subject to production as well.

8 THE COURT: And let me ask you, Mr. Wasserman, do you
9 know who Change Healthcare is?

10 MR. WASSERMAN: I do not.

11 THE COURT: Mr. Andalman, do you know?

12 MR. ANDALMAN: I believe Change Healthcare was
13 utilized by Roseland, I know, to communicate with some of the
14 individuals who had testing done. People received emails
15 from -- or letters from Change Healthcare. Relator was aware
16 of that. But I don't really know what the relationship was or
17 the involvement of Change Healthcare with Roseland or AML.

18 THE COURT: So Change Healthcare, as far as you know,
19 Mr. Andalman, is a separate and distinct entity, separate and
20 apart from AML?

21 MR. ANDALMAN: That -- it is certainly separate and
22 apart from AML. I think I actually received a letter from
23 Change Healthcare on some health insurance issue for my family
24 the other day, and it would be on -- completely unrelated. I
25 think they just are a service provider.

1 THE COURT: So going through AML's response to
2 discovery requests, AML seems to take the position that it did
3 not submit any bills or claims on behalf of Roseland for COVID-
4 19 testing.

5 That's not accurate, Mr. Wasserman?

6 MR. WASSERMAN: From what I have learned since I was
7 retained, the answer to your question is yes. Or correct, your
8 Honor, that is not accurate.

9 What I am struggling, and I want to make clear for the
10 Court and for the parties, is I'd like to be able to identify
11 what was actually billed by AML directly or through Roseland or
12 through a third party. And that's been the bulk of our work
13 over the last three weeks since we got retained.

14 MR. ANDALMAN: Your Honor, if I could just supplement
15 that. Our understanding from now having talked to
16 Dr. Applewhite's counsel and other lawyers for these parties is
17 that AML did its own billing for a period of time and then
18 reached some kind of an agreement with Roseland whereby
19 Roseland would submit bills. And then I don't even know the
20 word pejoratively -- by kick backed or shared the payments with
21 AML.

22 So one of the things that I have talked about with
23 both counsel for Roseland and counsel for AML is getting
24 documentation of how that arrangement worked and what the scale
25 of it was in terms of Roseland sort of kicking back or sharing

1 billings with AML.

2 THE COURT: In your submission, plaintiff's
3 submission, plaintiff says that he was told that Roseland and
4 AML had an agreement to submit false COVID testing claims. Who
5 told the relator that this was happening?

6 MR. ANDALMAN: The -- I -- we were told that by
7 Dr. Applewhite's counsel that he was present for a meeting at
8 which that was discussed between the CEO of Roseland and the
9 head of AML.

10 THE COURT: Okay. Who is -- what's the name of the
11 CEO?

12 MR. ANDALMAN: Ken Egan.

13 THE COURT: And who was there for AML?

14 MR. ANDALMAN: Walid. I don't know his last name.

15 MR. WASSERMAN: His last name is spelled D-A-J-A-B, I
16 believe. I could double check to confirm.

17 THE COURT: D-A-J-A-B?

18 MR. WASSERMAN: Yeah.

19 THE COURT: First name?

20 MR. WASSERMAN: Walid, W-A-L-I-D.

21 THE COURT: Okay. Got it.

22 MR. WASSERMAN: I can confirm for the record his last
23 name.

24 THE COURT: Just so we're clear, Mr. Montenegro was in
25 a meeting where Tim Egan and Mr. Dajab discussed a plan to

1 submit false COVID testing claims?

2 MR. ANDALMAN: That is what I am actually -- not
3 Mr. Montenegro. Dr. Applewhite was in such a meeting. And
4 Dr. Applewhite's counsel informed me of that.

5 The relator was, un- -- that was the relator's
6 understanding, that he was not in the meeting, he had heard
7 about that.

8 THE COURT: So who told the relator?

9 MR. ANDALMAN: Well, I don't --

10 THE COURT: So the only -- only information you have
11 is Applewhite's attorney telling you this.

12 MR. ANDALMAN: Well, the relator worked there. It was
13 his understanding working there that that was the arrangement,
14 I don't know the individual who told him that, but that was
15 what he observed in his workplace.

16 It has been confirmed to me now by all the parties.
17 So AML's counsel has agreed that that was the arrangement.
18 Not -- and so has Roseland's and so has Dr. Applewhite's.

19 THE COURT: Is that a -- is that, Mr. Wasserman -- is
20 your client's position that was in fact engaged in false
21 claims?

22 MR. WASSERMAN: No, I have never made such a
23 confirmation and I am not doing so now. In fact, our client
24 maintains that they weren't engaged in any false claims and has
25 told me.

1 THE COURT: All right. Let me stop you. So --

2 MR. WASSERMAN: Sure.

3 THE COURT: -- let me ask you, Mr. Andalman, why do
4 you come to that conclusion that AML has basically conceded the
5 false claims point?

6 MR. ANDALMAN: Well, I wasn't saying that they
7 conceded that it was false. What I was saying was that they
8 had agreed that Roseland would submit claims and they would
9 then share -- which I believe is also illegal -- share in
10 amounts received on those claims. So that -- that issue is
11 something that we are -- that we have alleged and that we
12 believe we have now seen substantiation that that's true, but
13 we haven't received very much discovery.

14 Dr. Applewhite's proffer, I guess, through his counsel
15 to me has been that he was in discussions where, for example,
16 he was asked to submit claims on behalf of -- or to approve
17 claims, to sign off and give his subscription as to medical
18 necessity, for full respiratory panels that would be conducted
19 by AML --

20 THE COURT: And let me ask you --

21 MR. ANDALMAN: -- on behalf of Roseland.

22 THE COURT: -- when you say he was asked, who asked
23 him?

24 MR. ANDALMAN: Dr. Applewhite says he was asked by
25 AML, by Walid and by Egan, to submit claims for full

1 respiratory panels for patients who only came in for a PCR
2 test. And he says that he actually left the employ of Roseland
3 because he refused to do that because it was self-evidently
4 improper.

5 THE COURT: Interesting. And -- because the
6 information I also saw was that Roseland investigated
7 Dr. Applewhite and fired him, right?

8 MR. ANDALMAN: We believe that's false.

9 THE COURT: But that's what the information shows.
10 Discovery information at least.

11 MR. ANDALMAN: That -- no, I don't think that that is
12 what it shows.

13 THE COURT: I'm not asking you whether you agree or
14 disagree. But is that what Roseland's position is through its
15 discovery?

16 MR. ANDALMAN: It is not what its documents show, it
17 is what its lawyers say.

18 THE COURT: So when you say in your submission,
19 Mr. Andalman, that relator was told that Roseland and AML had
20 an agreement to submit false claims, when you say relator, you
21 mean including relator's agents, such as attorneys?

22 MR. ANDALMAN: The relator was told that when he
23 worked there.

24 THE COURT: I know. So then let me go back to my
25 original question. Who told the relator?

1 MR. ANDALMAN: I don't know the answer to that as I
2 sit here today, your Honor.

3 THE COURT: Well, then how do you not know that, If
4 the relator was told that?

5 MR. ANDALMAN: Your Honor, that -- it was not a fact
6 that I memorized. But I'm happy to ask the relator and come
7 back to it. It is what we have alleged.

8 THE COURT: So what about this attachment issue,
9 Mr. Wasserman, have you looked into this?

10 MR. WASSERMAN: I'm sorry, I am not following the
11 question, your Honor.

12 THE COURT: Part of the motion is that, number one,
13 emails are not produced in native format.

14 MR. WASSERMAN: Oh.

15 THE COURT: Number two, while some emails are produced
16 by way of PDF version, attachments referenced therein are not.

17 MR. WASSERMAN: I -- so there is no question that's
18 true. The way that the production was done was essentially one
19 700-page PDF printed -- literally printed by my predecessor
20 counsel. His name, predecessor's counsel's name appears on the
21 documents. I have never seen somebody do this before. I -- I
22 can't even begin to defend him. It is wrong.

23 We have done a proper collection, a native collection
24 of the emails to the tune of tens of thousands of emails. I do
25 have the attachments in proper native format, Excel, PDF,

1 whatever they are. They need to be reviewed and produced
2 pursuant to the rules.

3 And I acknowledge to the Court and to the parties that
4 we need to do that and I'm -- we are endeavoring to do that.

5 THE COURT: Well, do you have a deadline in mind?

6 MR. WASSERMAN: I guess my response, your Honor, is
7 I'll do what I can to accept whatever the Court directs. I
8 don't have a deadline in mind. The reason I say that is
9 because there is a lot of material. But I'm also mindful of
10 the reality of the timeline of this case, your Honor, and so I
11 want to be respectful of the Court and we'll do what's
12 directed.

13 THE COURT: Okay. So let me try to better understand.
14 You say a lot of materials and that somehow is preventing AML
15 from producing the emails or whatever production?

16 MR. WASSERMAN: No, not at all. It is just completing
17 our review takes time. It is not --

18 THE COURT: Review for responsiveness or privilege?

19 MR. WASSERMAN: Yeah. Responsiveness and privilege.
20 But primarily responsiveness. Privilege should be relatively
21 quick given advances in technology. It is the responsiveness
22 that I question.

23 And that sort of has impeded some of our ability to
24 produce other records in this case because I want to be able to
25 tell the relator's counsel these are the documents that relate

1 to claims billed by AML versus documents related to claims
2 billed by somebody else.

3 THE COURT: Let me ask you this question. Because the
4 motion to compel against AML, I guess they reference Request
5 for Production Numbers 1 through 11, 13 and 14. So when you
6 say you are reviewing the documents for responsiveness, are you
7 keeping these particular requests in mind or all of the
8 requests served?

9 MR. WASSERMAN: So of course, your Honor, those
10 particular requests. But yes, also to your second question in
11 part because, as the Court's already acknowledged, we have to
12 amend discovery responses because they improperly indicated
13 that AML never submitted claims, which relator's counsel is
14 correct, that's actually not true, and at some point AML was
15 submitting its open claims. I just need to identify what those
16 time periods are and records are.

17 THE COURT: Okay. Motion to compel against AML is
18 granted to the extent that AML to provide supplemental
19 discovery responses by October 25.

20 MR. WASSERMAN: Your Honor, if I may, just for the
21 record, the CEO or president of AML's last name -- it is Walid,
22 W-A-L-I-D, last name is D-A-B as in boy-A an in apple-J as in
23 Jack.

24 THE COURT: I see. D-A-B-A-J?

25 MR. WASSERMAN: Yes, your Honor.

1 THE COURT: Got it. Thank you.

2 MR. WASSERMAN: Sorry about that.

3 THE COURT: No worries. Thank you.

4 Then let's go to motion to compel against Roseland.

5 So when a motion to compel is drafted the way the plaintiff has
6 drafted, it is difficult for the Court to enter a specific
7 order that's going to be cabined adequately for the Court to
8 sanction in the event something is not done -- something is not
9 done right.

10 And I say that because plaintiff identifies request
11 for production of document numbers, interrogatory numbers. But
12 then you address topics that are inadequate. And what I mean
13 by that is you mentioned things like, oh, we didn't get any
14 supporting documents for the claims submitted. Well, what are
15 you tying that to? Which requests? Which interrogatories?

16 You also mention, hey, we need to get the documents
17 pertaining to the settlement in connection with the BCBS
18 dispute. Again, what are we taking about here? Are they
19 specific request numbers that are tied to this particular
20 subject matter?

21 And so what I can do though is provide some guidance
22 on these topics that are raised by the plaintiff. That's all I
23 can do.

24 And Roseland in kind responded simply to the general
25 topics that are raised in the motion to compel.

1 So, again, let me start with an update from the
2 plaintiff. Since the filing of the motion, it appears that
3 there was additional activity. And so I'll ask you, what has
4 happened since the filing of the motion, that's Document Number
5 110, and what issues are still outstanding that the Court needs
6 to address?

7 MR. ANDALMAN: Your Honor, there has been no
8 additional production since the filing of the motion. And so
9 we believe all these issues do need to be addressed. The
10 specific -- and I'm happy to go through it. We did identify
11 with regard to each general topic the specific RFP numbers that
12 were involved. I'm happy to review that. I see that they are
13 referenced in the discussion as opposed to summarized
14 somewhere. And I apologize for not organizing it that way.
15 But I can go through and point the Court to where in the motion
16 the specific RFPs are identified.

17 THE COURT: No, we're not going to redraft the motion
18 today in court.

19 MR. ANDALMAN: I'm not redrafting, I'm just saying
20 I'll read it --

21 THE COURT: No. Look, they are grouped together.
22 They are not distinguished. When I see a motion to compel, I
23 want to know what is the nature of the case, what did you ask
24 for in each specific request or interrogatory, what is the
25 response thereto, and why is it deficient. That's not done.

1 We're talking about subject matters that plaintiff believes
2 that Roseland failed to address.

3 So let's talk about those subject matters. Which
4 matter do you want to discuss first?

5 MR. ANDALMAN: Your Honor, if we could talk about the
6 claims information, because I think that's the critical issue
7 in the case.

8 THE COURT: Let me ask this question: According to
9 Roseland, Roseland provided spreadsheets showing each line item
10 that is associated with each claim, right?

11 MR. ANDALMAN: That is what they say.

12 THE COURT: But you don't agree with that.

13 MR. ANDALMAN: I don't. Well, they did provide
14 spreadsheets, but the spreadsheets do not provide any
15 information that allows us to understand what the government
16 was actually told in the claim, what support there was for the
17 claim, even what services were provided with regard to that
18 claim. It is just a list of claims. It does not allow us to
19 evaluate this case.

20 And for them to take the position --

21 THE COURT: That's not what Roseland said though,
22 right? That you can actually evaluate the case or the merits
23 of the case by simply looking at the spreadsheet. That's not
24 what Roseland is saying.

25 MR. ANDALMAN: I'm happy to share it with your Honor.

1 I have printed some of the copies out and show you.

2 THE COURT: No, no.

3 MR. ANDALMAN: You cannot tell from those sheets.

4 THE COURT: What is my question? My question is:
5 Roseland did not say the spreadsheet themselves are sufficient
6 to assess the merits of this case. The spreadsheets are simply
7 a list of claims that Roseland submitted to the government,
8 right? That's what Roseland is saying.

9 MR. ANDALMAN: Well, they are saying that is a list of
10 claims, that those claims -- that list does not provide
11 information about the nature of what was claimed. And what our
12 motion to compel seeks is the documents that support the claims
13 for reimbursement.

14 THE COURT: Mr. Duff, how many lines are in these
15 spreadsheets reflecting a number of claims submitted?

16 MR. DUFF: Your Honor, there are two different
17 spreadsheets. One of them includes -- and there are two
18 spreadsheets because that's what Roseland's -- the hospital's
19 system was able to generate. But there are tens of thousands
20 of lines on these spreadsheets detailing claims and testing or
21 services rendered.

22 THE COURT: Let me ask you again. How many lines do
23 these spreadsheets show and the number of claims?

24 MR. DUFF: Approximately 23,000.

25 THE COURT: And 23,000 is combined, both the

1 spreadsheets?

2 MR. DUFF: I know for sure, your Honor, that one of
3 them is approximately 23,000. And I -- I'm not remembering
4 exactly the number on the other spreadsheet.

5 THE COURT: Do they overlap at all in terms of claims
6 submitted?

7 MR. DUFF: Yes. So they deal with the same claims
8 submitted. One of them includes CPT codes, the -- CMS codes
9 that are used to bill these services.

10 I believe the other spreadsheet deals with the actual
11 dollar amounts that are submitted associated with each claim or
12 testing.

13 THE COURT: So let me come back to you, Mr. Andalman.
14 So you want all documents supporting all 23,000 claims?

15 MR. ANDALMAN: Yes. What we asked for --

16 THE COURT: Because you intend on proving that each of
17 the 23,000 claims is not medically -- was not medically
18 necessary?

19 MR. ANDALMAN: Yeah. We intend to provide that --

20 THE COURT: All 23,000, each claim, per claim.

21 MR. ANDALMAN: Your Honor, it is -- the penalties are
22 10 to 15 thousand dollars per claim.

23 THE COURT: No. Listen to my question. When you're
24 at trial in front of a jury, you're going to go through each of
25 the 23,000 claims and how each claim is not medically

1 necessary?

2 MR. ANDALMAN: We will have an expert witness who
3 provides --

4 THE COURT: Expert witness.

5 MR. ANDALMAN: And that expert will provide summary
6 documents to the jury and will explain that he has reviewed
7 them --

8 THE COURT: And let me ask you, how will the expert
9 conduct his study?

10 MR. ANDALMAN: By reviewing what we request for in RFP
11 4 as outlined on page 8 of our motion. We ask in that RFP for
12 all documents that constitute Roseland's claims for
13 reimbursement from third-party payors, which is the central
14 issue in every False Claims Act case.

15 THE COURT: And have you talked to your expert?

16 MR. ANDALMAN: We have -- I have -- we have not
17 because we have received no information that constitutes the
18 claims.

19 THE COURT: Do you have a retained expert?

20 MR. ANDALMAN: We have not even retained the expert,
21 your Honor, because we haven't been able to get any discovery
22 as to what the claims are.

23 THE COURT: So, I don't understand why you think it is
24 unreasonable for Roseland to say -- why can't we do a
25 statistical sampling of the claims submitted once we have a

1 sample identified by an expert -- because the sample has to be
2 identified by an expert, not by attorneys, and then we have the
3 supporting documents for those claims in that particular sample
4 pool.

5 MR. ANDALMAN: Your Honor, we don't even --

6 THE COURT: Why is that unreasonable?

7 MR. ANDALMAN: Because we don't even have information
8 to give to the expert so that he could make a reasonable
9 educated determination of what a statistically significant
10 sampling would be. And in this case --

11 THE COURT: Have you had -- this is -- you don't have
12 an expert, so no one has said -- no one has looked at the
13 spreadsheets and said, oh, Mr. Andalman, this is not
14 sufficient. I can't look at this as the universe of claims
15 because certain pieces of information is missing. You don't
16 have that, right?

17 MR. ANDALMAN: Your Honor, I can do that. And anyone
18 who looks at the spreadsheet could do that.

19 THE COURT: No, no, listen to my question. You don't
20 have that at this time, do you?

21 MR. ANDALMAN: I don't have -- I have not retained an
22 expert. But I don't know any rule or authority that requires
23 me to hire an expert before I obtain basic discovery in a case.

24 THE COURT: Have you done a False Claims Act case --

25 MR. ANDALMAN: I --

1 THE COURT: -- where you're dealing with claims
2 submitted to Medicare or Medicaid?

3 MR. ANDALMAN: I have, your Honor.

4 THE COURT: And you have used experts in those cases,
5 right?

6 MR. ANDALMAN: I have.

7 THE COURT: And you have used statistical sampling
8 rather than going through each claim by claim?

9 MR. ANDALMAN: I have never had a party or seen a
10 party --

11 THE COURT: No, no, no. Listen to my question.

12 MR. ANDALMAN: Yeah, I haven't had that circumstance
13 come up.

14 THE COURT: In those situations, you used statistical
15 sampling to actually prove your case?

16 MR. ANDALMAN: Based on a baseline production from the
17 defendant, which they have not provided.

18 THE COURT: Okay. How do you define your baseline
19 production?

20 MR. ANDALMAN: I would need to know what was billed to
21 the government for each claim. One of our core allegations,
22 your Honor, is that Roseland chose to bill both serology and
23 PCR tests when that was not medically necessary. The
24 spreadsheets provide no information as to which claims involve
25 both of those tests. It is impossible to determine that.

1 So, no, I could not have an expert review it and make
2 a determination as to whether this is a sample of those tests
3 because they have refused to give it.

4 And I gather that, you know, you're saying they don't
5 have to, even though they have documentation that they identify
6 in their interrogatory answers that they say they created for
7 every claim that says what was billed and why. They have that
8 information. They have it electronically. It is in this UB-04
9 claim they have identified in their interrogatories, and they
10 have refused to produce that.

11 THE COURT: But you are not an expert in this area,
12 right? Each hospital probably has different ways of keeping
13 records.

14 MR. ANDALMAN: They have told me how they keep their
15 records, and they have refused to produce the documents.

16 THE COURT: Why is -- why is it unreasonable for you
17 to have -- because you're going to have an expert in this case.
18 Is that fair to say?

19 MR. ANDALMAN: Eventually there will be an expert in
20 this case.

21 THE COURT: Why can't we have the expert take a look
22 at the spreadsheet and say, look, I can certainly do a
23 statistical sampling, but this is what I am missing from these
24 spreadsheets? Are you in that position to actually say for the
25 expert, oh, I know for a fact that the expert is going to need,

1 you know, these pieces of information and they are missing from
2 the spreadsheets?

3 MR. ANDALMAN: I -- I know right now the expert would
4 need to know which tests involve -- or which claims involve
5 both the serology and the PCR test. And they have that
6 information, and they have chosen not to provide it.

7 THE COURT: And they have that information by UB-40?

8 MR. ANDALMAN: I think it is UB-04 is what they
9 identified under oath as created for every single claim.

10 UB-04 is the name of the claim.

11 THE COURT: So let me talk -- turn to you, Mr. Duff.
12 What about that, UB-04? Mr. Andalman says UB-04 is what he
13 needs. He doesn't need the spreadsheets. He doesn't need
14 anything else. He needs the UB-40 -- UB-04, the start -- the
15 sampling process, which Roseland says that's what we should do.

16 MR. DUFF: Your Honor, I --

17 THE COURT: And Mr. Andalman goes beyond that and
18 says, hey, you said you have this information but you're not
19 willing to turn that over. Why is that?

20 MR. DUFF: Well, your Honor, it is true that there
21 is -- there are patient records and certainly there are billing
22 records in the hospital system for each of these, let's say,
23 23,000 claims. Our position is and has been throughout this
24 case, you know, we're happy to engage in a sampling
25 methodology, but the burden on the hospital financially, to go

1 through that level of discovery for each and every single claim
2 is just untenable to the hospital, especially given the
3 hospital's limited resources. And we have shared this with
4 counsel, that the hospital is frankly in dire straits
5 financially.

6 And so, again, we're happy to engage in whatever
7 sampling methodology we can agree on. But there is no world in
8 which, you know, we think we need to -- we should have to go
9 through the expense and the effort of going through every
10 single claim.

11 THE COURT: But Mr. Andalman is not saying that he
12 wants everything at this time, but he's saying, hey, give us
13 the UB-04.

14 MR. DUFF: Well, I think, your Honor, that the two
15 spreadsheets we have produced -- and this has been our position
16 the whole time as well -- is that you can look at these two
17 spreadsheets and it will require analysis to go through these
18 and to compare the claims on both spreadsheets and line them up
19 correctly and see what amounts of money were billed and using
20 what CPT code. And you will be able to draw conclusions from
21 that analysis.

22 That's just not an analysis -- we haven't conducted
23 that analysis fully in detail of the spreadsheet data. And
24 what relator is we understand asking us for --

25 THE COURT: Right. No, no, no. Hold on, Mr. Duff.

1 Mr. Andelman says -- and you can disagree if it is inaccurate.
2 Mr. Andelman says UB-04 forms reflects all the information he
3 needs to engage in a dialogue with Roseland about sampling.

4 Why would it be burdensome to produce the UB-04 forms
5 that are already being maintained by Roseland?

6 MR. DUFF: Frankly, your Honor, that's still a very
7 large production, and it would require, I think, going into the
8 hospital systems.

9 THE COURT: Tell me the specifics about the burden.

10 MR. DUFF: I just know it would be a burden on the
11 hospital to have their --

12 THE COURT: That's not going to be good enough. You
13 just know that it is going to be burdensome. How is that going
14 to be a proper factual foundation for me to say one way or the
15 other whether the discovery is proportional or not?

16 MR. DUFF: That's fair. I understand that --

17 THE COURT: So what are the specific burdens of
18 producing these forms?

19 MR. DUFF: I -- I am relying on our client's
20 representation to us about what it would take and I --

21 THE COURT: And you didn't bother to ask more
22 questions, how is it going to be burdensome? You simply said,
23 oh, yeah, sure it is burdensome?

24 MR. DUFF: Well, I understand that our hospital has
25 limited IT personnel. I know it would require a lot of time

1 and effort on their part to pull all of the claims data off of
2 their system. That's my understanding. And I don't really
3 have clearer details beyond that. But I am happy to --

4 THE COURT: Why don't you? You know, you understand
5 your obligations in discovery, right?

6 MR. DUFF: Yes.

7 THE COURT: I don't think that you have met that
8 obligation if you haven't been asking these questions as to why
9 it would be burdensome to produce UB-04.

10 And, by the way, you haven't disagreed with
11 Mr. Andalman that these forms reflect the information that
12 plaintiff is looking for.

13 MR. DUFF: Your Honor, frankly, I am not familiar with
14 the form that counsel is referencing.

15 THE COURT: Why are you here then? You're
16 representing Roseland. You are the attorney here in a motion
17 hearing. And you're telling me you don't know what UB-04
18 shows?

19 MR. DUFF: Correct, your Honor. I actually came
20 here -- our -- my understanding was that the parties had been
21 engaging in discussions about a potential settlement conference
22 and there was discussion of continuing these motions.

23 THE COURT: How is that relevant to this particular
24 motion hearing?

25 MR. DUFF: That's totally fair, your Honor. So --

1 THE COURT: I -- it doesn't make me any -- feel any
2 better that I'm -- my comments are fair, because we're not
3 getting anywhere here. You know, that's the big problem.

4 So tell me, Mr. Andalman says that the two
5 spreadsheets do not show which claims involve both the COVID
6 testing and blood testing. Is that accurate?

7 MR. DUFF: I -- I don't think that's accurate. And
8 the reason is I think that you can do -- we have an internal
9 expert we're working with, just an attorney at our firm, and we
10 are aware that U -- there is an analysis that can be done to go
11 through these spreadsheets and assess what amounts were billed
12 for each claim and what CPT code was used.

13 THE COURT: So tell me about this analysis that you
14 think that can be performed. What analysis are you talking
15 about?

16 MR. DUFF: Sure. So, you know, one spreadsheet,
17 again, includes CPT codes. Each CPT code includes certain
18 criteria that are set by CMS for how it needs to be used.

19 THE COURT: Well, let me stop you.

20 Mr. Andalman, are you aware that there is a separate
21 CPT code for COVID testing and one for serology?

22 MR. ANDALMAN: Yes, your Honor.

23 THE COURT: And these spreadsheets have the CPT codes?

24 MR. ANDALMAN: For some, not all entries, there are
25 CPT codes. But they -- it is not clear that it is all the CPT

1 codes that were utilized for particular tests. So many of them
2 have one item where it appears from the -- and, again, he's
3 saying some internal expert has to compare these two and do an
4 analysis. I don't -- I'm not an internal expert on their
5 documents.

6 When I look at these, I don't have an ability to make
7 that determination. And what he is basically saying is they
8 have an internal expert who can compare two lengthy
9 spreadsheets and draw conclusions. We, as the relator, do not
10 have that capacity. We actually just need production of the
11 information.

12 MR. DUFF: Your Honor, if I may, I think any attorney
13 or anyone who is familiar with spreadsheets could conduct this
14 analysis. We just have someone who has experience in this area
15 who we have had working on this.

16 But this is an analysis that could be conducted by the
17 relator and there is no reason why there is significant
18 expertise that would be needed.

19 THE COURT: And these spreadsheets are maintained by
20 Roseland or something that was generated by Roseland for this
21 case?

22 MR. DUFF: These are spreadsheets that have been
23 generated by Roseland as -- as a record of the claims data that
24 it has.

25 And, again, I will also note -- we noted this in our

1 response, your Honor -- that we're happy to provide these two
2 spreadsheets for in camera review if your Honor would prefer.
3 I think that might be productive given that we seem to be
4 disagreeing on the --

5 THE COURT: No, no. Listen --

6 MR. DUFF: -- content of these spreadsheets.

7 THE COURT: -- please. My question is: These two
8 spreadsheets are spreadsheets maintained by Roseland during a
9 normal course of business or generated for this litigation?

10 MR. DUFF: These are spreadsheets that have been
11 compiled for purposes of this litigation.

12 THE COURT: Okay. Let's come back to UB-04. What is
13 your understanding, Mr. Andalman, to be more precise?

14 MR. ANDALMAN: My understanding comes from Roseland's
15 response to Interrogatory Number 20 in which they say, Roseland
16 states that generally speaking claims for reimbursement are
17 generated through Roseland's EMR system Meditech and bridged
18 over slash submitted to its billing clearinghouse, which it
19 actually identifies as Change Healthcare. Change Healthcare in
20 turn creates a claim form called a UB-04. Roseland's internal
21 billing team reviews claims and releases the claims
22 electronically through Change Healthcare. Each claim is then
23 sent to the appropriate payor.

24 So that is my understanding that for each claim there
25 should be a UB-04 that describes the claim and its basis.

1 THE COURT: How do you know that UB-04 form will show
2 that a particular claim is for multiple tests?

3 MR. ANDALMAN: Because it would -- it would have to
4 explain that based on this explanation that it is in
5 document -- in their interrogatory responses. It says, it is a
6 claim form. If it is a claim form that describes the services,
7 it would have to describe that, your Honor.

8 THE COURT: Let me ask you, Mr. Duff. You say that
9 these two spreadsheets were compiled for use in this
10 litigation. What underlying data did Roseland use to compile
11 these two spreadsheets?

12 MR. DUFF: Your Honor, I am not sure the answer to
13 that. I am, again, happy to go to our -- the hospital's IT
14 people and to ask exactly, you know, what the source of
15 the -- of the data. I -- my understanding is it is not data
16 that was -- where they went in and pulled documentation or data
17 from every single claim file.

18 THE COURT: You know, I appreciate that Roseland wants
19 to meet and confer about discovery issues. There is no problem
20 with that. In fact that's something that's encouraged.

21 But it shouldn't take months, right? And that's the
22 reason why I set these deadlines for filing the motion to
23 compel. I'm going to require Roseland to produce all relevant
24 UB-04 forms.

25 Okay. What's the next subject matter, Mr. Andalman?

1 MR. ANDALMAN: Your Honor, the next most substantive
2 matter involves this -- the Blue Cross Blue Shield claims. So
3 other understand- -- the relator's understanding, and what he's
4 conveyed to me, and I have confirmed this with Roseland's
5 counsel, the majority of claims that Roseland made were
6 actually made through Blue Cross and Blue Shield.

7 Roseland has refused to provide any information at
8 all, including on these spreadsheets --

9 THE COURT: Can you go back? The majority of what
10 claims?

11 MR. ANDALMAN: Of all COVID testing claims.

12 THE COURT: Not Medicare or Medicaid?

13 MR. ANDALMAN: Well, some of those Blue Cross Blue
14 Shield will be Advantage Plus claims related to Medicare and
15 Medicare. But our claim is not limited to Medicare and
16 Medicaid because we have a claim under the Illinois insurance
17 fraud prevention act which involves false claims to private
18 insurers.

19 THE COURT: Okay. Go on.

20 MR. ANDALMAN: Roseland has refused to provide any
21 data on the spreadsheets or otherwise that has anything to do
22 with any of these Blue Cross Blue Shield claims. Their only
23 basis for refusing to do so is they claim -- they claimed in
24 their brief they have had a settlement agreement with Blue
25 Cross Blue Shield as to any fraud against --

1 THE COURT: I understand. Let me ask you this: Do
2 you know whether there is UB-04 for these Blue Cross Blue
3 Shield claims?

4 MR. ANDALMAN: I have to assume that there are because
5 they say they do that for all claims.

6 THE COURT: And let me ask you, Mr. Duff, the two
7 spreadsheets compiled for this litigation, these two
8 spreadsheets do not include claims submitted to BCBS?

9 MR. DUFF: That is correct, your Honor. Because there
10 was this confidential settlement agreement between BCBSIL and
11 the hospital to settle --

12 THE COURT: But isn't fair to say, Mr. Duff, that the
13 Court did not dismiss plaintiff's IICFPA claim?

14 MR. DUFF: That's correct. However, the -- and we
15 discussed this in the briefing. But the purpose of the IICFPA
16 is not to be a punitive statute, it is to be a remedial
17 statute. And our position is that --

18 THE COURT: But let me ask you, Mr. Duff, those are
19 merits issues, not necessarily ripe for discovery. As long as
20 there is an IICFPA claim pending, why aren't claims submitted
21 to the BCBS relevant and proportional?

22 MR. DUFF: Well, because I think in the process of
23 discovery, it also involves a weighing of the privacy interests
24 and public policy interests at stake. And so I think the
25 disclosure of BS -- BCBSIL documents is -- would be very

1 significant because it would contravene the settlement
2 agreement between the hospital and BCBSIL. And so that's why
3 this is, we believe, the correct point in time to address this
4 issue is because what -- you know, once these documents are
5 disclosed, there -- you know, there is no clawing them back.
6 But, you know, again --

7 THE COURT: But isn't that an affirmative defense that
8 Roseland has to prove at trial? That because there is this
9 settlement agreement, that even though there may be false
10 claims, it is a moot point? In other words, plaintiff simply
11 cannot recover any relief as a result of the agreement, but
12 it's not something that the Court or the jury has to deal with
13 at a later time.

14 MR. DUFF: I think the merits of the claim are
15 distinct from whether there needs to be disclosure of what we
16 have asserted is confidential information. And so I think this
17 juncture in discovery, the Court, your Honor, has a duty to
18 weigh the privacy interests and the proportionality of the
19 case.

20 THE COURT: When you say privacy interest, whose
21 privacy interest?

22 MR. DUFF: I think both of the parties to the
23 confidential settlement agreement, BCBSIL and Roseland.

24 I would also note, in addition to that, that there is
25 a wealth of patient health data that is associated with all the

1 BCBSIL claims, which is an added consideration.

2 THE COURT: But it doesn't appear to me from the
3 submissions that this particular repayment agreement actually
4 resolved the claims or issues between BCBS and Roseland. It
5 appears after the agreement was fully executed, another issue
6 came up where the special investigation division had to get
7 involved, right?

8 MR. DUFF: That's right. But the -- the repayment
9 agreement was an agreement between the two parties about how
10 they would proceed to resolve any disputes. And so that --
11 that agreement itself in that sense was a resolution. And the
12 patients's negotiations, both before and after their payment
13 agreement, were confidential and are confidential.

14 We have also provided the affidavit of Roseland's
15 chief financial officer Robert Vais attesting to the fact that
16 the hospital understood these negotiations to be in confidence.

17 And so for that reason, you know -- it is true that
18 there were discussions both before and after the agreement, but
19 I don't think that takes away from the fact that the entire
20 thing is --

21 THE COURT: So tell me --

22 MR. DUFF: -- confidential.

23 THE COURT: Walk me through how this is going to play
24 out. You say we're not producing any documents regarding the
25 repayment agreement. Oh, and by the way, jury or judge, the

1 IICFPA claim should be dismissed or adjudicated in favor of
2 Roseland because we have this repayment agreement. How does
3 that work?

4 MR. DUFF: I think -- if there were any other claims
5 submitted to the other third-party payors, which I believe are
6 included in the claims data on the spreadsheets we have
7 produced -- I'm not sure if relator is aware of any other
8 third-party payors claims that are at issue -- those would, I
9 think, be an appropriate subject for the IICFPA claim.

10 THE COURT: And yet Roseland hasn't filed a motion to
11 carve this particular portion out of the case. In other words,
12 the claims are what they are and the claims involve BCBS
13 claims, right?

14 MR. DUFF: Well, that's right. I -- based on the
15 complaint, the relator's complaint, I don't think it is
16 exclusively based on BCBSIL claims. We did file a motion to
17 dismiss, which was denied. But I think this is the juncture in
18 the case where this issue has come up in discovery.

19 THE COURT: Do you agree, Mr. Duff, that
20 Mr. Andalman's comment that BCBS claims are the majority of the
21 claims that Roseland submitted?

22 MR. DUFF: I don't -- I don't think I would agree
23 sitting here today that it is a majority of the claims Roseland
24 submitted. That may be true after an extensive review --

25 THE COURT: Okay.

1 MR. DUFF: -- of the data.

2 THE COURT: Large share of the claims submitted.

3 MR. DUFF: Again, your Honor, I don't have a sense --

4 THE COURT: How long have you been on this case?

5 MR. DUFF: Since after the discovery began, your
6 Honor.

7 THE COURT: And so what if they are confidential,
8 don't we have a confidentiality order here in this case?

9 Mr. Andalman?

10 MR. ANDALMAN: We do, your Honor.

11 THE COURT: So what if they are confidential?
12 Confidential information is exchanged all the time in
13 discovery, as long as there is an agreement and documents are
14 properly designated as confidential. Why shouldn't the
15 plaintiff be entitled to look at these documents, especially
16 because of your affirmative defense?

17 MR. DUFF: Yeah, I think it is true, of course, that
18 we have a confidentiality order in place. I don't think that
19 fact on its own means that when -- what we see as a very clear
20 issue, that there is a resolution agreement in place, it is
21 confidential. Just because there is a confidentiality order in
22 place in this case doesn't necessarily mean -- I think that
23 those are documents that are going to be able to ultimately be
24 shown to a jury or be used in the IICFPA claim.

25 I'll also note, I think, there is essentially one case

1 that the relator has relied on, and it did not involve a
2 situation where there was a settlement agreement and
3 confidential resolution --

4 THE COURT: So the problem I am having with this is
5 that you're asking the Court and the plaintiff to essentially
6 trust and adopt Roseland's position wholesale without any kind
7 of scrutiny, without examining the agreement and how it may fit
8 into this particular case. Because under the Act, State of
9 Illinois is the real party in interest. State of Illinois has
10 an interest in ensuring that fraudulent claims are not
11 submitted. Not simply to protect BCBS's coffer, but also to
12 protect all citizens of Illinois. Because we all understand
13 how insurance industry works, higher the claims, claims paid
14 out, it actually impacts the premium that all subscribers have
15 to pay.

16 So what if BCBS made a settlement with Roseland, what
17 about the rest of the State of Illinois that has an interest in
18 ensuring that fraudulent claims are not submitted? So why
19 shouldn't plaintiff be able to prosecute? Again, we come back
20 to the motion to dismiss. It has been denied. The claim
21 stands, right?

22 MR. DUFF: Yeah. I think in the -- sort of given the
23 situation in this case where, again, this agreement is in
24 place, and considering that the statute, the purpose of the
25 statute is not to be punitive, it is to be remedial. So our

1 position has been, you know, the entire time that any issues
2 that existed between the hospital and BCBSIL have been
3 resolved, they have been remediated. And so there is no -- the
4 purpose of the statute is to remedy, you know, insurance claims
5 issues --

6 THE COURT: Are you saying Roseland is not going to
7 make any argument whatsoever that this case cannot be
8 maintained, at least the state claim cannot be maintained
9 against Roseland because of the settlement? You're not going
10 to make that argument?

11 Of course you're making the argument, right?

12 MR. DUFF: Well, there are -- yes, as to the BCBSIL
13 claims.

14 THE COURT: So I don't understand it. This is -- I
15 started this inquiry by asking a question: How is it
16 possible -- help me out -- help me understand how is it
17 possible for Roseland to offer the agreement as defense, but
18 plaintiff is not entitled to any documents regarding that
19 agreement? Can I ever see a situation where that's allowed in
20 civil litigation?

21 MR. DUFF: Your Honor, I believe that, you know, in
22 civil litigation, if you had a confidential settlement
23 agreement between two -- you know, a party to the case and a
24 third party, I'm not sure that complying production of
25 documents related to the --

1 THE COURT: I think you're missing my point.

2 Comment from Mr. Andelman, if any.

3 MR. ANDALMAN: I don't have anything to add, your
4 Honor. I think you understand our arguments.

5 THE COURT: But I have a question for the plaintiff.

6 MR. ANDALMAN: Sure.

7 THE COURT: 502(b) doesn't apply here because we're
8 not dealing with privileged information. We're dealing with
9 confidential information, yes, but not privileged information.
10 But Rule 408 is quite clear, we're not going to admit
11 and rely on information that pertains to settlement
12 negotiations. Why is this important to your case?

13 MR. ANDALMAN: Well, first of all this --

14 THE COURT: Who cares -- who cares that they had an
15 agreement? Because your position is we don't care that BCBS
16 settled with Roseland, we still have standing to sue on behalf
17 of the State of Illinois to ensure that fraudulent claims are
18 not permitted, right?

19 MR. ANDALMAN: Absolutely.

20 THE COURT: So why do we care about this agreement?

21 MR. ANDALMAN: Well, your Honor, I -- for us the issue
22 isn't the agreement because the agreement was produced by AML
23 without a confidentiality note, by the way, and AML was not a
24 party to it, but it gave us a copy. It is not a settlement
25 agreement so I don't think 408 has any applicability, doesn't

1 release any claims, nor does it suggest that any claims are
2 resolved.

3 And what we're looking for is documentation. For
4 example, as the Court pointed out, the UB-04 forms for the Blue
5 Cross Blue Shield claims that's relevant to us.

6 The other thing that would be relevant to us is there
7 was plainly a view by Blue Cross Blue Shield that there were
8 fraudulent claims being made. Because on May 4th, when the
9 payment -- a prepayment was due under this repayment agreement,
10 it wasn't made. And that's the emails that we attached. And
11 they said -- Roseland said, why wasn't it made? And Blue Cross
12 responded, because our special investigations unit thinks that
13 maybe these claims are fraudulent.

14 Well, what happened after that with regard to internal
15 communications within Roseland or with Blue Cross Blue Shield
16 demonstrating that the claims were false are relevant to our
17 claim on behalf of the State of Illinois, which is separate,
18 that indeed they were engaged in insurance fraud.

19 And I would just add, as the Illinois Supreme Court
20 pointed out in the Liebowitz case, that the Illinois insurance
21 fraud act that we're talking about is a separate provision for
22 causes of action by insurers.

23 That's not what we're suing under. What we're suing
24 under is the damage to the state when individuals or entities
25 like Roseland make fraudulent claims. We're entitled to

1 discovery about those claims as to Blue Cross Blue Shield just
2 as we are as to other third-party payors.

3 THE COURT: With regarding the subject matter of UB-04
4 for Blue Cross Blue Shield claims, plaintiff has the better
5 argument here. I don't see how the repayment agreement has
6 anything to do with the IICFPA claim, that it is in fact
7 pending against Roseland. The only thing that the Court cares
8 about is whether the claims are relevant and proportional to
9 the needs of this case.

10 Without knowing the claims, without knowing the
11 universe of claims, plaintiff is not able to prosecute
12 reasonably. And if in fact repayment agreement is somehow a
13 form of defense, it gives more reason why information
14 surrounding the repayment agreement is important. Which
15 includes the actual claims submitted to BCBS.

16 So for those reasons, Roseland is required to produce
17 all UB-04 for the relevant time period. Which is what? What
18 is the relevant time period?

19 MR. ANDALMAN: Relevant time period, your Honor, is
20 March of 2020 through to the present.

21 THE COURT: Wait a second. We're not -- wait. You
22 want all claims that Roseland submitted to BCBS? That can't be
23 right.

24 MR. ANDALMAN: Only -- not all claims. Only with
25 regard to this COVID testing. Because we don't have

1 information that these policies ever stopped at Roseland.

2 THE COURT: Thank you.

3 MR. DUFF: I was going to clarify that. I just want
4 to make sure that we are on the same page about which -- what
5 kind of testing this is encompassing.

6 MR. ANDALMAN: Yeah, yeah.

7 THE COURT: All right. For that relevant time period
8 for the relevant, I guess, CPT codes.

9 Okay. What's the next subject matter?

10 MR. ANDALMAN: And, your Honor, just to be clear about
11 the testing, we're really talking about the COVID testing that
12 would have included PCR, serology, and the full respiratory
13 panels.

14 THE COURT: Thank you for the clarification.

15 MR. ANDALMAN: Your Honor, the next category involves
16 emails and ESI from 2020. So we reviewed what Roseland said in
17 their response. Some of which is true and some of which turned
18 out not to be true. It -- they produced ESI that somehow had
19 its metadata changed.

20 THE COURT: Say that one more time.

21 MR. ANDALMAN: The ESI, electronic discovery, that had
22 had its metadata altered in some way. So that when we searched
23 for the year 2020, we didn't see it. They said well, yes,
24 that's because the date field in the metadata was somehow
25 changed to 2021. It never explained how that happened. But

1 that in fact we did produce some documents from 2020.

2 So we went into the lists in their motion to see if we
3 could confirm that, and it is true that there are some 2020
4 emails that were produced. It is not a full (unintelligible)
5 responsive set.

6 So, for example, even in the very limited production
7 that AML provided, we have found multiple examples of
8 responsive 2020 emails that AML provided that involved Roseland
9 that Roseland did not produce.

10 We also found documents, multiple ones, that they say
11 in their brief came from 2020. When we opened on the included
12 correspondence, sometimes from 2021, sometimes from 2023.

13 So the list that they provided in their brief were
14 not, unfortunately, reliable. And the issue we have is that it
15 seems clear to us that they have not provided an actual
16 comprehensive production responsive to our request from the
17 year 2020, which is the key year because that's when the
18 policies were formulated for these billing practices.

19 THE COURT: So if I am understanding your in-court
20 argument today, it appears to be a little bit different than
21 the motion itself.

22 MR. ANDALMAN: Okay.

23 THE COURT: The motion simply says everything -- hey,
24 Roseland, you didn't produce any 2020 documents. Roseland
25 says, no, you got it wrong, we did produce 2020 documents.

1 What you're now saying is based on Roseland's response
2 to the motion, you went back to take a look and it appears
3 that, yes, there are 2020 -- year 2020-generated documents, but
4 it appears that the production is insufficient because, as an
5 example, certain emails produced by AML were not in fact
6 collected and produced by Roseland, which should have been in
7 their collection.

8 MR. ANDALMAN: That's correct, your Honor. We were
9 unaware that there had been changes in the metadata of what
10 they produced. So under Rule 34, parties are to produce
11 information, electronic information in the manner in which it
12 is kept. Somehow that did not happen with Roseland's
13 production. So when we searched the metadata for date created
14 or edited, what we found was nothing from 2020.

15 THE COURT: Who is your ESI coordinator? Or do you
16 have someone who is assigned to address ESI issues for this
17 particular case?

18 MR. ANDALMAN: Our lawyers work on it, including
19 Ms. Guler here.

20 THE COURT: Mr. Duff, do you have a response that --
21 response to the assertion that 550 pages of documents from 2020
22 produced are not adequate? Because clearly certain emails AML
23 produced should have been part of that production but those
24 emails are missing. Now that causes suspicion over Roseland's
25 efforts to in fact collect all responsive emails.

1 Response?

2 MR. DUFF: Well, we were happy to clarify the metadata
3 issue. And so when initially relator let us know that, you
4 know, they weren't seeing any 2020 documents, we were happy to
5 clarify that, that issue that some of the dates were wrong.

6 I think, you know, we have conducted our review of the
7 production we have got from our client. We have attempted to
8 do -- you know, make a good effort to do so. And the Bates
9 ranges that we have identified, which is hundreds of pages of
10 documents from 2020, we believe were accurate.

11 If relator is communicating to us today that there are
12 some documents they think were not produced, we are happy to go
13 back and take a second look and to make sure that if there were
14 anything -- any communications that (unintelligible) we're
15 happy to go and try and find those.

16 But based on our efforts in this case, we are -- we
17 went into today confident that we had produced everything that
18 was responsive from 2020.

19 MR. ANDALMAN: Your Honor, if I could suggest, with
20 regard to this issue, so this issue -- the explanation that the
21 metadata was changed, we don't -- we still don't have an
22 explanation why, but that it was -- did not come in between our
23 letter on August 7th and the deadline for us to file this
24 motion at the end of August. It didn't come until a couple
25 weeks later when they filed their response.

1 But we're happy to meet and confer on this specific
2 issue so that we can provide it to you, if necessary, in a more
3 focused form.

4 I would only add to that, that with regard to the Blue
5 Cross Blue Shield issue, I am presuming, Mr. Duff can confirm,
6 that no email or other documentation was produced that would
7 otherwise have been responsive if it involved Blue Cross and
8 Blue Shield. And we do believe the Court's order should
9 include that production today.

10 THE COURT: With respect to BCBS, it is not to be
11 carved out in this discovery. The claim under the Illinois law
12 remains. And plaintiff is entitled to know what claims were
13 submitted to BCBS.

14 So if in fact Roseland in any way basically said, we
15 are going to go ahead and respond to the discovery request, but
16 anything dealing with BCBS is off limits, that is an incorrect
17 position to take.

18 And my order is that if in fact that position was
19 taken, it needs to be reversed and Roseland needs to revisit
20 the discovery requests and provide responsive documents
21 pertaining to BCBS claims.

22 MR. DUFF: And, your Honor, just to clarify, that is
23 as to all confidential discussions between BCBS and the
24 hospital?

25 THE COURT: That's right.

1 MR. DUFF: Okay.

2 THE COURT: I mean, you have the control over how you
3 designate the information. And plaintiff will have to abide by
4 the designation, unless plaintiff challenges the designation.
5 And in which case, I will in fact rule on the designation
6 whether it is in fact proper.

7 Regarding the -- yeah, I looked at that as well, why
8 something is not marked as 2020 and it appears to be generated
9 in 2021. So what we need to do is this: One, not only do we
10 have a suspicion over whether any alterations are made. Number
11 two, we also have a question as to whether the search protocol
12 was robust enough to in fact collect and -- collect all
13 responsive documents.

14 So I'm going to require the parties to have at least
15 an initial discussion to set the table by no later than October
16 25.

17 So this is -- this conference is limited to having the
18 discussion about Roseland's ESI search protocol.

19 I'm not a fan of discovery on discovery, but I believe
20 that we have sufficient information to require this type of
21 conference at this time.

22 Okay. Next subject matter.

23 MR. ANDALMAN: Your Honor, the next subject matter
24 involves that interrogatory responses. Some of these, I think,
25 can be resolved through the Court's prior rulings. For

1 example, we raise the issue about identification of number of
2 claims involving PCR and serology tests, which was
3 Interrogatory Number 4. But it seems to us we'll get that
4 information with the UB-04 forms.

5 With regard to Interrogatory Number 12, Roseland would
6 not answer that based on the Blue Cross Blue Shield argument
7 that the Court has addressed. So presumably they will now
8 provide an answer to that interrogatory.

9 And then the other interrogatories we had raised were
10 22 to 26, which were asking Roseland to identify the facts it
11 relied upon in pleading its affirmative defenses. And that's
12 where Roseland in essence just said, read our motion to
13 dismiss. And we don't think that is an adequate response.

14 THE COURT: So regarding the affirmative defenses --
15 and this so troubles me. I think that attorneys really --
16 don't really research the issue properly before they're
17 actually asserting these affirmative defenses. Somehow yes,
18 they all look great, that you have a list of affirmative
19 defenses, but they are meaningless.

20 For instance, first affirmative defense, lack of
21 falsity. That's not an affirmative defense. That's actually a
22 merit defense that you do not submit false claims. Defendant
23 does not have the standard of proof. Plaintiff bears that
24 burden to show that claims are in fact false.

25 An affirmative defense, if you look at it this way,

1 assume for the sake of argument that your allegations are true
2 and there is liability, affirmative defense then comes in and
3 says, but, irrespective of that, we're not liable for any
4 judgment because of X, Y, and Z. When you look at it that way,
5 you can see why the first affirmative defense doesn't make any
6 sense. Same thing with second affirmative defense.

7 And so I think that Roseland needs to look at these
8 affirmative defenses and figure out whether you have reasonable
9 factual basis for asserting them. If you don't, you need to
10 withdraw them or answer the question, what are your underlying
11 facts supporting these defenses.

12 You can't say discovery is ongoing. We don't have any
13 facts. Well, Rule 11 pretty much says exactly what your
14 obligations are when you are signing pleadings.

15 So either you answer the questions or you withdraw the
16 defenses so you don't have to deal with discovery.

17 Now when you do withdraw, it doesn't mean that you
18 can't assert affirmative defenses at a later time. When facts
19 do surface and you have those facts and then within a
20 reasonable period of time you go into court and say, hey,
21 Judge, we need to go ahead and amend our answer because we now
22 have facts showing that we are entitled to certain affirmative
23 defenses. But to say a knee-jerk reaction, oh, we need to go
24 ahead and list these affirmative defenses in an answer, no,
25 that is not right.

1 To the extent that you have, then it is fair game.
2 Plaintiff is entitled to know what facts you relied on in
3 asserting these defenses. That's my ruling as to those.

4 What's the next subject matter?

5 MR. ANDALMAN: Your Honor, the next, and I think the
6 last subject, is pretty narrow. It -- we had made an -- raised
7 an issue about the boilerplate and general objections.

8 But the real issue there is under Rule 34(b) (2) (C)
9 parties are required to say whether documents are being
10 withheld based on objections. Roseland hasn't done that. And
11 we would ask that they let us know so that if there are issues,
12 we can talk those through. But we don't know whether they are
13 withholding documents based on their objections.

14 THE COURT: I have to assume that attorneys have read
15 Rule 34. And if they don't say that we are withholding certain
16 documents based on certain objection, then they are not
17 withholding any documents.

18 Now, how is that significant? Let's say during a
19 deposition somebody blurts out that they have this information
20 or I communicated using slack or whatever the case may be. And
21 yet, there is the response, doesn't say anything about
22 withholding. Well, then we have a problem.

23 And so I believe in the honor system. In discovery we
24 essentially work on an honor system. We have to trust each
25 other. So if you don't follow the rule, the only outcome there

1 is that you are going to be sanctioned at a later time.

2 So all I can say is that the parties are to follow the
3 rules. And if they don't, then obviously appropriate motion
4 will be filed and we'll deal with it at that time.

5 MR. ANDALMAN: Okay. Thank you, your Honor.

6 We don't have anything further then.

7 THE COURT: I'm going to go ahead and simply say in my
8 order today, for the reasons stated in open court, motion to
9 compel is denied in part, granted in part.

10 Whenever I say -- whatever I said here controls,
11 rather than any minute order that I enter.

12 I am -- yes, I'm sure you have actually perceived that
13 I am a little bit frustrated with the pace of discovery. But
14 I'm also frustrated with the way issues are presented to me.
15 You have to understand, my orders -- in order my -- in order
16 for my rulings to be specific, your motion has to be specific.

17 And what happens then is if the ruling is simply based
18 on these subjects matters, what's going to happen? You're
19 going to end up having to file another motion to compel because
20 perhaps the defendants didn't proceed the way plaintiff
21 proceeded. And so that's why I dealt with the issues today the
22 way I did in terms of providing guidance on the subject
23 matters. And where appropriate, I ruled that Roseland needs to
24 produce certain information. Okay?

25 MR. ANDALMAN: Thank you for your time, your Honor.

1 THE COURT: With respect to the deadline by when
2 Roseland must comply with these rulings --

3 MR. DUFF: Your Honor, if I may, I would just say, you
4 know, one thing that we -- has been a consideration throughout
5 this case from the hospital is its depleting financial
6 resources. And so one thing that would -- you know, for
7 example, the hospital's insurance is covering part of its
8 defense and liability in this case. But it is a depleting
9 limits policy.

10 If there is any -- there has been some discussion of
11 potential settlement in this case. And so the one thing I
12 would say is it will be -- we will be much more enabled to
13 pursue a settlement, a resolution of this case before an
14 immense discovery effort following these motions to compel.

15 So for that reason, we would ask for an extended
16 deadline, if at all possible, if there is a chance. And I'm
17 happy to have counsel jump in if there is a chance to pursue
18 resolution in the meantime.

19 THE COURT: The deadline for complying is November
20 8th. I appreciate what you are saying, Mr. Duff, and I want to
21 do everything I can to encourage the parties to resolve this
22 matter obviously, because that would be the better outcome
23 rather than the Court deciding.

24 That said, this case has been pending for a very long
25 time. And everyone knows what it takes to litigate a civil

1 case of this nature. And yet I haven't heard anything from the
2 parties that there has been some active negotiation to resolve
3 this matter.

4 And so I'm not going to rely on this representation
5 that Roseland wishes to settle this case to delay discovery in
6 this case,

7 Now that said, if the parties want to provide specific
8 information saying, oh, Judge, we have been discussing
9 actively, it sounds like it is very productive and we can
10 really maybe get to the touchdown end zone, then I certainly
11 will consider extending the deadline. But without something
12 more specific and concrete, I'm not willing to delay discovery
13 any further.

14 And on a theoretical level, it makes sense, right,
15 that Roseland will say it has very limited resources. But,
16 again, that's meaningless to me. What does that really mean,
17 you know? I have no idea what you mean by that. That it's
18 running out of money. I don't know what that means, you know,
19 in terms of complying with the Court's order. What is
20 required?

21 And I'll give you an example. I had this issue come
22 up in terms of burden of production. One attorney came in
23 actually had a declaration. I took one example. What was
24 required? Went through each step that individual had to
25 complete to show burden. That specificity is what the Court

1 requires.

2 To say that something is overly burdensome --
3 certainly proportionality does require the Court to consider
4 the many factors, including the ability on the part of the
5 defendant to be able to produce the discovery that is needed.
6 So -- but without specifics, there isn't a whole lot I can do.

7 Anything else?

8 MR. ANDALMAN: No. Thank you, your Honor.

9 THE COURT: Mr. Wasserman?

10 MR. WASSERMAN: No, your Honor. Thank you for your
11 time.

12 THE COURT: Mr. Duff?

13 MR. DUFF: No, your Honor.

14 THE COURT: Thank you.

15 (Which concluded the proceedings.)

16 CERTIFICATE

17 I certify that the foregoing is a correct transcript
18 from the digital recording of proceedings in the above-entitled
19 matter to the best of my ability, given the limitation of using
20 a digital-recording system.

21

22

23 /s/Pamela S. Warren
24 Official Court Reporter - Retired
25 United States District Court
Northern District of Illinois
Eastern Division

November 7, 2024
Date